HON'BLE SRI JUSTICE K.G.SHANKAR

Civil Miscellaneous Appeal No.3755 of 2002

Date: 16-11-2012

Between

Smt. Kabeerunnisa Begum

… Appellant/
Petitioner

and

Mohd. Kazam Ahmed
and another

… Respondents/
Respondents

HON'BLE SRI JUSTICE K.G.SHANKAR

Civil Miscellaneous Appeal No.3755 of 2002

Judgment:

For the injuries sustained in a vehicular accident, the appellant claimed compensation at Rs.1,00,000/- under Section 166 of the Motor Vehicles Act, 1988 and the Rules thereunder. After full-fledged trial, the Tribunal awarded compensation at Rs.33,000/- together with interest at 9% per annum from the date of the petition till deposit. Assailing the same, the claimant preferred this appeal. During the pendency of the appeal, the claimant filed M.A.C.M.A.M.P.No.4151 of 2010 seeking to amend the pleading and enhancing the claim from Rs.1,00,000/-

to Rs.3,50,000/- together with interest. Unfortunately, this petition was allowed unconditionally through orders dated 05-6-2012 without any direction to pay additional Court fee. Where the claimant has not paid additional Court fee, I am afraid that the claim deserves to be confined to Rs.1,00,000/- only.

2. On 15-5-1998, the claimant was proceeding in the car belonging to the 1st respondent from Pahade Shareef towards Gunfoundry. She was accompanied by the members of her family. At about 11.30 a.m., by the time the car reached Chandrayanagutta cross-roads, the driver of the car dashed a lorry bearing registration No.AP 9U 9903. It is the case of the claimant that the accident was on account of the rash and negligent driving of the driver of the offending car of the 1st respondent. The claimant sustained injuries in the said accident. She was immediately shifted to the hospital of Dr. Vedprakash, Orthopaedic Surgeon. She was later removed to Durgabai Deshmukh Hospital and Research Centre. Claiming that she was not able to discharge her usual and regular duties subsequent to the date of the accident owing to the injuries sustained by her, the claimant sought for compensation at Rs.1,00,000/-.

3. The 1st respondent-owner of the offending car remained *ex parte*. The 2nd respondent-insurer contended that the petition was bad for non-joinder of the

owner and insurer of the lorry involved in the accident. The insurer also contended that the claimant engaged the offending car for hire and that the

1st respondent thus violated the terms and conditions of the policy.

4. The claimant filed rejoinder that on account of her relationship with the members of the family of the owner of the offending car, the 1st respondent loaned the car to the claimant on the date of the accident and that the claimant did not take the car of the 1st respondent for hire.

5. There is no cross appeal regarding the liability of the insurer and the owner of the car (respondents 2 and 1 respectively). There is also no appeal regarding the mode and manner in which the accident occurred and regarding the non-joinder of the owner and the insurer of the lorry. The Tribunal found that the accident was due to the rash and negligent driving of the driving of the offending car. The Tribunal also found that the respondents 1 and 2, who are the owner and the insurer of the car, are jointly and severally liable to satisfy the claim. The Tribunal indirectly held that the owner and the insurer of the lorry are not necessary parties and that the claimant cannot be non-suited for their non-joinder. So far as the appeal is concerned, the claimant laid the same questioning the quantum of compensation.

6. The Tribunal awarded (a) compensation towards pain and sufferance at Rs.15,000/-, (b) compensation towards medical expenses at Rs.16,000/-,
(c) compensation towards loss of earning at Rs.5,000/-, (d) compensation towards transport charges at Rs.1,000/- and (e) compensation towards extra nourishment at Rs.1,000/-. Sri K.Jagathpal Reddy, learned counsel for the claimant, contended that compensation for partial permanent disability had not been granted by the Tribunal and submitted that the compensation towards partial permanent disability be awarded.

7. It is true that compensation was not awarded for partial permanent disability. The claimant contended that she was a tailor and was earning Rs.3,000/- per month. No evidence was let in by the claimant to establish her calling. The Tribunal consequently held that the claimant failed to prove that she was a tailor and was earning Rs.3,000/- per month. Be that as it is, where it is not the case of anybody that the claimant is not an able bodied person, the claimant certainly shall
be entitled to be treated to have income of her own. Where the accident occurred in 1998, in the absence of evidence regarding the calling of the claimant, it would be appropriate to determine the income of the claimant notionally at Rs.15,000/- per annum. The claimant submitted that she was 35 years old at the time of the accident. From the medical record in Exs.A-2 to A-6, A-8

to A-10 and A-12 to A-14, it can be gathered that the claimant was 35 years old at the time of the accident. Consequently, it would be appropriate to apply multiplier '16' for the present case.

8. P.W.2 examined the claimant on 06-10-2000. He was not the doctor who treated the claimant. The claimant did not examine the doctors who treated her at the time of the accident. The Tribunal consequently rejected the claim of compensation towards partial permanent disability. Sri P.Harinatha Gupta, learned Standing Counsel for the 2nd respondent-insurer, contended that as the claimant examined P.W.2 who examined the claimant two years after the accident, the evidence of P.W.2 cannot be accepted and that as there was no medical evidence, the claim of the injured appellant towards partial permanent disability cannot be accepted.

9. In **Charan Singh v. G.Vittal Reddy**[1], regarding a claim under the provisions of the Workmen's Compensation Act, 1923, a Division Bench of this Court held that any qualified doctor can assess the loss of disability vis-à-vis the earning capacity and clarified that it was not necessary that the doctor who treated the claimant alone should be examined. In **New India Assurance Co., Ltd. v. Commr. For Workmen's**

Compensation etc.[2], a learned single Judge of this Court reiterated the same view relying upon **Charan Singh** (1 supra). In **Syed Saleem v. Abdul Shukur**[3], a learned single Judge of this Court observed that disability certificate need not be issued by the doctor who treated the victim and that the assessment of disability could be made by any qualified medical practitioner subject to the condition that such a doctor was examined to prove the certificate issued by him. I wholly agree with the view expressed by the Division Bench and the two learned single Judges of this Court that it is not necessary that the doctor who treated the claimant alone should be examined to prove the injuries and the disability sustained by the claimant.

10. The claimant examined P.W.2. It is not as though P.W.2 was deposing without physical examination of the claimant. P.W.2, a qualified Orthopaedic Surgeon, certainly is an appropriate person to determine the disability that the claimant sustained. I therefore consider it appropriate to take the evidence of P.W.2 into consideration in determining the disability of the claimant.

11. P.W.2 considered that the claimant suffered partial permanent disability to a tune of 50%. However, it is only the functional disability which determines the rate of disability for award of compensation. Where P.W.2

considered that the medical disability was at 50%, it would be just and proper to assess the rate of functional disability at 30%. Accordingly, I determine the rate of disability that the claimant sustained at 30%.

12. If the annual notional income at Rs.15,000/- is multiplied by multiplier 16, the amount would be Rs.2,40,000/-. 30% of the same is Rs.72,000/-.
The claimant shall be entitled to compensation at Rs.72,000/-.

13. No other question is raised regarding the quantum of compensation.

14. The claimant indeed placed reliance upon **P.Yeshodamma v. T.Buchi Reddy**[4] where a learned single Judge of this Court held that compensation can be awarded at a quantum of more than the claim as what is to be granted is 'just compensation'. The learned counsel for the claimant, *inter alia*, contended that the claimant therefore be awarded compensation albeit the quantum is more than Rs.1,00,000/-. Where the claimant has not paid the Court fee for enhanced claim, I do not consider that the claimant shall be entitled to compensation at more than Rs.1,00,000/-.

15. I may add Rs.72,000/- to the compensation awarded by the Tribunal at Rs.33,000/-. The amount consequently is Rs.1,05,000/-.

16. However, the initial claim by the claimant was for Rs.1,00,000/- before the Tribunal. I therefore deem it appropriate to confine the claim to Rs.1,00,000/- only. Accordingly, although the claimant would be entitled to compensation at Rs.72,000/- towards the partial permanent disability, the claimant is entitled to compensation at Rs.1,00,000/- only including the compensation awarded under various heads by the Tribunal. The claimant would have been entitled to interest at 6% per annum as the claim relates to an accident in 1998. As there is no cross appeal, I deem it appropriate to confine the rate of interest to 9% per annum at which interest was awarded by the Tribunal.

17. Accordingly, this appeal is allowed in part.
The award of compensation is enhanced to Rs.1,00,000/- (Rupees one lakh only) together with interest at 9% per annum from the date of the petition till deposit.
The respondents 1 and 2, who are jointly and severally liable to answer the claim, shall deposit the same within one month from today.

18. On such deposit, the claimant shall be entitled to withdraw the entire awarded amount in view of the time elapsed between the date of accident and now, together with accrued interest. The appeal is allowed without costs.

K.G.SHANKAR, J.

16th November, 2012.
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HON'BLE SRI JUSTICE K.G.SHANKAR

Civil Miscellaneous Appeal No.3755 of 2002
(Judgment)

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16th November, 2012.

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[1] 2004 (6) ALD 183 (DB)

[2] 2004 (6) ALD 598

[3] 2007 (1) ALT 648

[4] 2006 ACJ 414